

JIM IRVIN
COMMISSIONER-CHAIRMAN

RENZ D. JENNINGS
COMMISSIONER

CARL J. KUNASEK
COMMISSIONER

NEW



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ARIZONA CORPORATION COMMISSION

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MEMORANDUM

TO: Commissioner-Chairman Jim Irvin
Commissioner Renz D. Jennings
Commissioner Carl J. Kunasek

FROM: Michael G. Burton, Sr. *MB*
Director of Securities

DATE: November 12, 1998

RE: United Mortgage Trust
Docket No. S-03304A-98-0000

CC: Jack Rose, Executive Secretary

Attached is a proposed Order Assessing Administrative Penalty, Offer of Rescission and Consent to Same ("Order") in the matter of United Mortgage Trust ("UMT"). This Order is the product of negotiations between UMT and the Division, which resulted from transactions with Arizona residents in violation of the Arizona Securities Act. UMT has executed the attached "Consent to Entry of Order by the Commission and Waiver of Hearing." This Order includes the assessment of an administrative penalty of five thousand dollars (\$5,000.00).

The facts leading to this Order are as follows:

On July 17, 1997 UMT filed with the Division an application for registration of its securities, by and through its counsel. On August 21, 1997, staff for the Division issued a comment letter to UMT's counsel which described the deficiencies in their filing. On September 2, 1997, UMT's counsel issued a letter to the Division, responding to the deficiencies described in the Division's comment letter.

The Division's records indicate that this response was never received, and that no contact, written or verbal, was made with Division staff regarding the status of UMT's filing, until September of 1998. On August 25 of this year, the Division issued a Notice of

November 12, 1998

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Abandonment pursuant to A.R.S. § 44-1861 to UMT's counsel, after which time UMT's counsel contacted Division staff by telephone.

It appears that, although the Division never issued a Notice of Registration regarding the filing, UMT came to the erroneous conclusion that the Division's comments had been resolved, and that the offering was indeed registered for sale to the public in Arizona. As a result approximately \$169,000.00 worth of UMT's securities were issued to ten (10) Arizona residents, from March through July of this year.

The Order requires that UMT issue an offer of rescission (including interest, in addition to principal) to these ten investors pursuant to A.A.C. R14-4-308. Division staff has reviewed UMT's responses to the comment letter of last year, and has determined that the deficiencies have been corrected; therefore, upon completion of the rescission offer, UMT's securities will be registered for sale to the public. A cashier's check in the amount of \$5,000.00 has also been received by the Division.

UMT has also instituted measures to ensure that unregistered transactions do not reoccur. These steps essentially involve improving communications between UMT, its counsel, and UMT's Selling Group Manager (the lead underwriter of its public offering), on a regular basis, and requiring written confirmation of all registrations prior to starting or resuming sales to the public.

The Division believes this proposed Order and Consent is in the public interest, and recommends its acceptance to the Commission.

Originator: Lee R. Poole

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 JIM IRVIN
Commissioner-Chairman
3 RENZ D. JENNINGS
Commissioner
4 CARL J. KUNASEK
Commissioner
5

6 In the matter of)

7 **UNITED MORTGAGE TRUST**
1701 N. Greenville, Suite 403
8 Richardson, TX 75081)

9 Respondent.)

DOCKET NO. S-03304A-98-0000

DECISION NO. _____

**ORDER ASSESSING ADMINISTRATIVE
PENALTY, OFFER OF RESCISSION AND
CONSENT TO SAME**

10 **I.**

11 **UNITED MORTGAGE TRUST ("UMT")** elects to permanently waive its right to a hearing and
12 appeal under Articles 11 and 12 of the Securities Act of Arizona (the "Act") with respect to this Order
13 Assessing Administrative Penalty, Offer of Rescission and Consent to Same ("Order"); admits the
14 jurisdiction of the Arizona Corporation Commission ("Commission"); neither admits nor denies the
15 Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by
16 the Commission.

17 **II.**

18 **FINDINGS OF FACT**

19 1. **UNITED MORTGAGE TRUST ("UMT")**, whose last known address is 1701 N.
20 Greenville, Suite 403, Richardson, TX 75081, was at all times relevant hereto conducting business in the
21 State of Arizona. UMT is a real estate investment trust ("REIT"), whose securities are sold to the public
22 as shares of beneficial interest in the trust.

23 2. On or about July 17, 1997, UMT filed an application for registration by qualification of its
24 securities pursuant to A.R.S. § 44-1892, et. seq., with the Securities Division (the "Division") by and
25 through its counsel.
26

7. Because the Division's records indicated that no response to its comment letter had been received, a notice of abandonment pursuant to A.R.S. § 44-1861.K was issued to UMT's counsel on or about August 25, 1998. At this point, the fact of UMT's unregistered sales of its securities came to light.

CONCLUSIONS OF LAW

3. UMT offered unregistered non-exempt securities for sale in violation of A.R.S. § 44-1841.

ORDER

Decision No. _____

1 1. IT IS ORDERED that, pursuant to A.R.S. § 44-2036, UMT shall pay an administrative
2 penalty in the amount of five thousand dollars (\$5,000) payable upon entry of this Order.

3 2. IT IS ORDERED that, pursuant to A.R.S. § 44-2032, UMT make a rescission offer to any
4 Arizona investor who purchased unregistered securities in the following manner:

5 A. The written offer to repurchase stating in reasonable detail the facts out of which
6 liability may have arisen must be filed with, and receive prior approval from, either the Director of
7 Securities or the Director of Registration, Securities Division, before distribution to the investors;

8 B. The offer to repurchase the securities shall include cash equal to \$169,000.00
9 together with interest on such amount for the period from the date of purchase payment to the date of
10 repayment, such interest to be computed at the legal rate, less, the amount of any income received on the
11 securities;

12 C. The offer to repurchase shall be made within 10 business days of the date of this
13 Order,

14 D. The offer to repurchase shall state that such offer may be accepted by the purchaser
15 within 30 days after the date of receipt thereof.

16 E. When the rescission offer has been completed and the appropriate funds paid,
17 UMT must verify to the Division that the rescission offer was made in accordance with this Order.

18 3. IT IS ORDERED that, upon verification of the completed rescission offer by the Division,
19 UMT's securities will be registered for sale to the public.

20 ...

21 ...

22 ...

23 ...

24 ...

25 ...

26 ...

4. IT IS FURTHER ORDERED that this Order shall take effect immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION

COMMISSIONER-CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, JACK ROSE, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 1998.

JACK ROSE
Executive Secretary

DISSENT

**CONSENT TO ENTRY OF ORDER BY THE COMMISSION
AND WAIVER OF HEARING**

UNITED MORTGAGE TRUST ("UMT") acknowledges that it has been fully advised of its right to a hearing to present evidence and call witnesses. UMT waives all hearing procedures and right to appeal provided by the Securities Act of Arizona with respect to this Order Assessing Administrative Penalty, Offer of Rescission and Consent to Same ("Order").

UMT admits the jurisdiction of the Arizona Corporation Commission with respect to matters set forth in this Order and Consent.

UMT neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order and Consent and consents to the entry of this Order and Consent.

UMT states that its entry into this Consent to Entry of Order is a voluntary act and that no promise was made nor coercion used to induce UMT to enter into it.

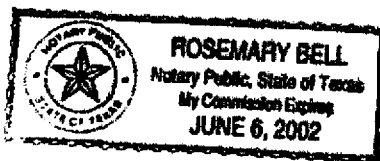
UMT understands that his Consent to Entry of Order does not preclude the Commission or any other agency, officer of this state or its subdivisions, from instituting other civil or criminal proceedings now or in the future.

UNITED MORTGAGE TRUST

By: *C. Giff*
Title: President

SUBSCRIBED AND SWORN TO BEFORE me this 11 day of November

1998.



My Commission Expires:

Rosemary Bell
NOTARY PUBLIC

APPROVED AS TO FORM AND CONTENT
BERRY MOORMAN, P.C.

By: *Robert A. Hudson*
Attorney for United Mortgage Trust
Robert A. Hudson